REMARKS

The Final Office Action mailed October 21, 2008 has been received and carefully noted. Claims 1, 2, 4-8, 10-29, 31-35, and 37-43 are currently pending in the subject application and are presently under consideration.

Claim 43 has been amended herein to correct a minor informality. Entry of this amendments is respectfully requested to place the Application in better condition for appeal. A listing of claims can be found on pages 2-11 of this Response.

Favorable reconsideration of the pending claims is respectfully requested in view of the amendments and the following comments.

I.   Rejection of Claims 1 and 28 Under 35 U.S.C. § 102(e)

Claims 1 and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sauvage (U.S. Patent No. 6,651,185). It is respectfully requested that these rejections be withdrawn for at least the following reason. Sauvage does not describe each and every element of the claims.

> For a prior art reference to anticipate, 35 U.S.C. §102 requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). In particular, independent claim 1 recites:

> clearing the first set of data by the second network process if a time period expires, the time period beginning upon receiving the notification of death; and

> synchronizing by the second network process the first
> set of data with a *second set of data* if the time period does
> not expire, *the second set of data received from the first
> network process after the first network process restarts.*

(emphasis added). Independent claim 28 recites analogous aspects. The Examiner states:

> *Sauvage* teaches when the first process is killed that data is lost and the standby (second) process takes over *(col. 4 line 53 – col. 5 line 5, col. 5 lines 19-32).* Thus[,] it is evident that when a process is killed the data is cleared or 'lost' when the secondary process is activated *(col. 5 lines 12-32). Sauvage* discloses two separate timeout periods respectfully [*sic*] used to end the heart-beat period and declare that a process is dead *(col. 3 lines 38-62).*

See Final Office Action mailed October 21, 2008, Response to Arguments, pg. 2 (emphasis in original).

The Applicants do not believe that Sauvage discloses each and every element of the independent claims. The Examiner appears to equate the data contained in the active process that is "cleared or 'lost'" with the first set of data recited in the claims (*See* Final Office Action mailed October 21, 2008, Response to Arguments, pg. 2). Sauvage discloses as part of the synchronization between an active process and a standby process, that the active process transfers all its data to a standby process before the active process is killed (*See* Sauvage, col. 5, ll. 6-27). However, if the data in the active process equates to the first set of data recited in the claims, then the Applicants do not discern which element of Sauvage teaches the second set of data recited in the claims. The claim recites "the second set of data [is] received from the first network process after the first network process restarts," but Sauvage is silent with respect to receiving the second set of data from the active process after it is **restarted**. The claim further

recites "synchronizing by the second network process the first set of data with a second set of data," but the synchronization disclosed in Sauvage only involves a single set of data, *i.e.*, the data in the active process that is transferred to the standby process (*See* Sauvage, col. 5, ll. 6-27). Sauvage's synchronization does not involve a second set of data. Thus, Sauvage does not disclose all the limitations characterizing the second set of data recited in the claims. If the Examiner maintains these rejections, the Applicants respectfully request that the Examiner clarify which element of Sauvage discloses the first set of data and which element of Sauvage discloses the second set of data in view of independent claims 1 and 28.

In view of the above, Sauvage does not describe each and every element of independent claims 1 and 28. Accordingly, it is respectfully requested that these rejections be withdrawn.

II.   Rejection of Claims 2, 4-8, 10, 11, 16-27, 29, 31-35, and 37-43 Under 35 U.S.C. § 103(a)

Claims 2, 4-8, 10, 11, 16-27, 29, 31-35, and 37-43 stand rejected under 35 U.S.C. § 103(a) as being obvious over Sauvage, in view of Fuchs *et al.* (U.S. Patent No. 5,440,726) (Fuchs). The Applicants respectfully request that these rejections be withdrawn for at least the following reason. Sauvage and Fuchs, alone or in combination, do not teach or suggest all the claim limitations expressly, impliedly, or obviously.

> To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). *See* M.P.E.P. § 706.02(j). In particular, independent claims 7 and 34 recite:

> if a first set of data is generated by the first network process before a time period expires, the time period beginning upon receiving by the second network process a notification of death of the first network process, then synchronizing by the second network process the *first set of data* with a *second set of data*, the second set of data having been generated by the first network process before the death of the first network process; and
>
> > if the time period expires, then clearing the second set of data by the second network process.

(emphasis added). The Examiner does not indicate that Fuchs discloses these aspects and cites the same sections of Sauvage noted above as teaching these aspects (*See* Final Office Action mailed October 21, 2008, pg. 6). It is noted that these claims also recite synchronizing by the second network process a **first set of data** with a **second set of data**. It is further noted that these two sets of data are both generated by the first network process. By contrast, Sauvage's disclosure of synchronization only involves one set of data, *i.e.*, the data in an active process that is transferred to a standby process. Thus, Sauvage does not teach or suggest the first set of data in connection with the second set of data. If the Examiner maintains these rejections, the Applicant respectfully requests that the Examiner clarify which element of Sauvage discloses the first set of data and which element of Sauvage discloses the second set of data in view of independent claims 7 and 34.

Independent claim 16 recites:

> the first network process to generate a first set of data before restarting and a second set of data after restarting, the second network process to *synchronize for the second network process the first and second set of data upon determining a time period has not expired*, the second network process to *clear the first set of data upon*

> *determining the time period has expired,* the time period beginning upon receiving a notification of death of the first network process ....

(emphasis added). Independent claims 24 and 39 contain analogous aspects. The Examiner concedes that Fuchs does not teach these aspects, but contends that Sauvage teaches these aspects (*See* Final Office Action mailed October 21, 2008, pgs. 4 and 5). For the reasons noted above, Sauvage does not disclose synchronization of a first set of data and second set of data, but rather transfers one set of data from one process to another. The Applicants note that these claims recite the first set of data is generated by the first network process before restarting and the second set of data is generated by the first network process after restarting. If the Examiner maintains these rejections, the Applicant respectfully requests that the Examiner clarify which element of Sauvage discloses the first set of data and which element of Sauvage discloses the second set of data in view of independent claims 16, 24, and 39.

Further, the Applicants believe that these claims are further distinguished from Sauvage because Sauvage's synchronization/clearing is not conditioned upon determining whether a time period has expired. The Examiner equates the "time period for confirming the death of the first process" disclosed in Sauvage with the time period recited in the claim. However, Sauvage's time period referred to by the Examiner is unrelated to Sauvage's synchronization and clearing aspect. Col. 5, ll. 6-27 of Sauvage states that synchronization occurs by transferring all data from an active process to a standby process, then killing the active process. These two occurrences are not dependent on determining whether a time period has or has not expired. Rather, data transfer occurs upon switch-over from active to standby and process killing occurs upon completion of the data transfer. Thus, Sauvage does not teach or suggest "the second network process to *synchronize for the second network process the first and second set of data upon determining a time period has not expired,* the second network

process to *clear the first set of data upon determining the time period has expired*, the time period beginning upon receiving a notification of death of the first network process" (emphasis added).

Regarding independent claims 20 and 43, the Examiner groups claim 20 with independent claim 16 and claim 43 with independent claims 1 and 16 (*See* Final Office Action mailed October 21, 2008, pg. 5). To establish a *prima facie* case of obviousness, the Examiner must provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" (*See* M.P.E.P. § 2141, *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S., 82 USPQ2d at 1396). The Applicants respectfully note that claim 20 contains different elements from claim 16 which were not addressed. For example, the Examiner did not provide a reference or explanation for the recited three separate memory elements that have specific relationships to each other. Claim 43 contains different elements from claims 1 and 16 which were also not addressed. The Examiner is silent regarding the limitations of "receiving a notification of first process revival; and clearing a stale indication if the timer has not expired at the second process in response to the notification of first process revival" (*See* independent claim 43). Thus, a *prima facie* case of obviousness has not been established for claims 20-23 and 43.

Dependent claims 2, 4-6, 8, 10, 11, 17-19, 21-23, 25-27, 29, 31-33, 35, 37, 38, 41, and 42 each depend from one of the above independent claims and thus incorporate the respective limitations thereof. For at least the reasons regarding the aspects of the independent claims, Sauvage and Fuchs, alone or in combination, do not teach or suggest all the claim limitations of these dependent claims. The Applicants respectfully request reconsideration and withdrawal of these rejections.

III.   Rejection of Claims 12-15 Under 35 U.S.C. § 103(a)

Claims 12-15 stand rejected under 35 U.S.C. § 103(a) as being obvious over Sauvage, Kidder *et al.* (U.S. Patent No. 6,694,450) (Kidder), and Damani *et al.* (U.S.

Patent No. 5,938,775) (Damani). Independent claim 12 recites:

> the first network process to generate a first set of data after restarting and the second network process to *synchronize for the second network process the first set of data with a second set of data generated by the first network process before restarting upon determining a time period has not expired,* the second network process to *clear the first set of data upon determining the time period has expired,* the time period beginning upon receiving a notification of death of the first network process ....

(emphasis added). This claim recites aspects analogous to independent claim 16, except that the first set of data is generated by the first network process after restarting and the second set of data is generated by the first network process before restarting. Thus, the above arguments of independent claim 16 apply to independent claim 12. Claims 13-15 depend from independent claim 12 and thus incorporate the limitations thereof. The Examiner does not indicate and the Applicants do not discern any part of Kidder or Damani that cures the aforementioned deficiencies of Sauvage regarding the aspects of the independent claims. Therefore, for at least the above reasons regarding the independent claims, Sauvage, Kidder, and Damani, alone or in combination, do not teach or suggest all the claim limitations of claims 12-15. The Applicants respectfully request reconsideration and withdrawal of these rejections.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

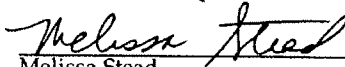BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Dated: December 19, 2008

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted to the United States Patent and Trademark Office electronically via EFS Web on the date shown below.

Melissa Stead

12-19-08

Date